

PATH

Department of Prevention, Assistance, Transition, and Health Access

BULLETIN NO. 01-07F

FROM Eileen I. Elliott, Commissioner
for the Secretary

DATE June 15, 2001

SUBJECT: ANFC-Related Medicaid Changes Necessary To Implement New Reach Up Program;
Clarification to Effective Date of Federal Poverty Levels for the Medicaid, Medicaid
Waiver (VHAP, VHAP-Pharmacy, and VHAP-PDP), and VScript Programs

CHANGES ADOPTED EFFECTIVE 07/01/01

INSTRUCTIONS

X Maintain Manual - See instructions below.

_____ Proposed Regulation - Retain bulletin
and attachments until you receive
Manual Maintenance Bulletin: 01-07F

_____ Information or Instructions - Retain
until _____

MANUAL REFERENCE(S)

M300	3201.64	3401.54
M323	3301.73	4001.84
3201.62	3301.74	4001.91

PATH proposes to eliminate deprivation as an eligibility criterion for ANFC-related Medicaid and make transitional Medicaid available for up to 36 months for all ANFC-related Medicaid recipients with increased earnings. Previously, PATH applied these rules to selected participants, under the Welfare Restructuring Project.

PATH proposed new regulations expressly articulating its ongoing practice to update the income maximums for the Medicaid, Medicaid waiver (VHAP, VHAP-Pharmacy, and VHAP-PDP), and VScript programs that are based on the federal poverty level (FPL) on April 1 of each year. At the request of the Legislative Committee on Administrative Rules, PATH considered the concerns of the Vermont Health Care Ombudsman and Vermont Legal Aid and developed an alternate proposal that represents a better solution for the department as well as for applicants for and beneficiaries of health care assistance.

ANFC-Related Medicaid Policy Changes Necessary to Implement New Reach Up Program

The new Reach Up program that goes into effect on July 1, 2001, replaces ANFC regulations (see Bulletins 00-22, 01-06) and affects eligibility for ANFC-related Medicaid. Under the authority of 33 V.S.A. §1103(c)(6) and Section 1931 of the Social Security Act, PATH proposes to extend provisions previously authorized under WRP waivers to eliminate deprivation as an eligibility criterion for ANFC-related Medicaid and make up to 36 months of TM available for all ANFC-related Medicaid recipients with increased earnings.

Clarification to Effective Date of Income Maximums Based on the Federal Poverty Levels

PATH proposed new regulations expressly articulating its ongoing practice to update the income maximums for the Medicaid, Medicaid waiver (VHAP, VHAP-Pharmacy, and VHAP-PDP), and VScript programs that are based on the federal poverty level (FPL) on April 1 of each year.

PATH determines eligibility for its health care programs by applying income tests based on a percentage of the FPL specified in procedures. The federal government updates and publishes its changes to the FPL annually, but the date of the publication varies from year to year. In recent years, the FPL changes were published as early as February 9th (1995) and as late as March 18th (1999). Many other programs that base eligibility on the FPL wait several months to update their program standards. For example, the Food Stamp Program updates its standards based on the FPL annually on October 1. In the past, PATH has been able to accommodate the unpredictable publication date of the FPL by updating the income maximums on April 1 each year.

With the approval of the Legislative Committee on Administrative Rules, the department revised its proposal to adjust its income maximums for inflation from the previous January through December, using a methodology similar to the one employed by the federal government in setting the federal poverty levels. Where the U.S. Bureau of Labor Statistics uses the average CPI for the full calendar year as part of its methodology, the department will use the average CPI for the first three quarters of the previous calendar year and a seasonally adjusted estimate for the fourth quarter. When tested for the years 1991-2001, the department's methodology yielded the exact FPL in nine out of ten years. In years when the actual FPLs exceed PATH's income maximums, PATH will issue a second increase, effective April 1 reflecting the actual FPLs. PATH will seek HCFA approval of our new methodology through an 1902(r)(2) disregard and amendments to our state Medicaid waiver programs.

Specific Changes to Policy Pages

With the approval of the Joint Legislative Committee on Administrative Rules, the department has inserted the phrase, "on January 1 using a methodology similar to the one employed by the federal government in setting the FPLs. In years when the actual FPL exceeds PATH's income maximum, PATH will issue a second increase on April 1" to replace the phrase, "either April 1, or the first day of the first calendar month beginning no sooner than 15 days following the annual federal update of the FPL, whichever is later", in each of the following sections: M302.21, M302.26, M302.27, 3201.64, 3301.74, 3401.54, and 4001.84.

M300TOC Inserted new subsections to the table of contents.

M300-
M301 Clarified organization of section by inserting subsection headings; deleted material rendered obsolete by July 1, 2001, expiration of the Welfare Restructuring Project (WRP).

Since first filing, the department corrected citations for the coverage groups in the body of the text found at M300 to M302.2 and M303.3.

- M301.1 Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1, or the first day of the first calendar month beginning no sooner than 15 days after the annual federal update of the FPL, whichever is later.
- M301.2 Eliminated the deprivation factor as an ANFC-related Medicaid eligibility factor.
- M302 Changed references to ANFC program to references to Reach Up.
- M302.1 Specified ANFC-related Medicaid categorical criteria.
- M302.2-
M302.28 Specified exceptions that enable applicants to meet ANFC-related Medicaid categorical eligibility criteria.
- M303 Revised section describing medically needy ANFC-related Medicaid eligibility. Deleted repetitious information specified elsewhere in the manual.
- M323 Since first filing, the department identified and deleted an obsolete reference to deprivation as an eligibility criterion in this section.
- 3201.62 Deleted obsolete sections of policy. Added income exclusions applicable to VScript Eligibility for German reparations to victims of the Holocaust and settlement payments to victims of Nazi persecution.
- 3201.64 Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1, or the first day of the first calendar month beginning no sooner than 15 days after the annual federal update of the FPL, whichever is later.
- 3301.73 Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1, or the first day of the first calendar month beginning no sooner than 15 days after the annual federal update of the FPL, whichever is later.
- 3401.53 Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1, or the first day of the first calendar month beginning no sooner than 15 days after the annual federal update of the FPL, whichever is later.
- 4001.84 Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1, or within 15 days of publication of the federal update, whichever is later.
- 4001.91 Updated existing regulation. Inserted clarification to make explicit the department's practice of updating income maximums based on the federal poverty levels by April 1,

or the first day of the first calendar month beginning no sooner than 15 days after the annual federal update of the FPL, whichever is later.

Summary of Comments

The Vermont Coalition for Disability Rights and the Office of the Health Care Ombudsman submitted comments in writing. No one appeared for the public hearing held on April 16, 2001 at 12:30 p.m. in the Skylight Conference Room, State Office Complex, Waterbury, Vermont.

Comment: Current regulations require the department to determine eligibility based on the FPL immediately upon their publication in the Federal Register. There is no legislative intent supporting the department's proposal to implement it later.

Response: Current law does not specify when the department must update the income eligibility levels for its mandatory and optional Medicaid coverage groups. Federal law and regulations only require the department to apply the financial methodologies and requirements of the most closely related cash assistance program. Social Security Act §1902(r)(2)(A); 42 C.F.R. §435.601.

Income eligibility standards for all of Vermont's health care programs exceed the coverage levels mandated by the federal government. For example, Vermont's use of 300 percent of the FPL as the income standard applicable for the Dr. Dynasaur program is a state-defined option. The state law establishing this program, Act 160 (1992), is silent on the timing for implementing annual increases to income eligibility standards. The legislature has entrusted the department to reasonably administer these specific aspects of health care assistance programs.

Income guidelines need to be effective as of the first day of a month because eligibility is determined on a calendar month basis. It is not reasonable to expect the department to implement the change immediately. The federal government provides no advance notice for when the guidelines will be published. The publication dates for the last 12 years were: 2/16/90, 2/20/91, 2/14/92, 2/12/93, 2/10/94, 2/9/95, 3/4/96, 3/10/97, 2/24/98, 3/18/99, 2/15/00, 2/16/01. The department needs administrative time to put these updates into effect as part of a planned process.

April 1 is a reasonable and responsive date. HCFA has consistently supported this approach for more than a decade, through its approval of Vermont's state Medicaid plan. By implementing these updates by April 1, the department uses less than the similar two months' lead time used by the Social Security Administration to implement its mass change to the social security and supplemental security income (SSI) programs. Likewise, the Food and Nutrition Service updates the income guidelines for the Food Stamp Program on October 1 of each year, seven or more months following the publication of the FPL in the federal register.

Moreover, looking back over the last six years, and taking into account the requirement that the department make new income limits effective the first of the month, plus the department's need for a minimum of 15 days' lead time to update the income guidelines following the publication of the FPL in the public register, the effective date of the

change would have been April 1st.

Comment: The department should make simple changes in its practice to determine eligibility manually when the new FPL is issued, until April 1 of each year. The department should flag denial of Medicaid applications where people are denied for small amounts of excess income in the months preceding the FPL changes and reevaluate them when the FPL is adjusted.

Response: The department is unaware of any justification for administering the health care assistance programs with income limits based on the FPL differently from other means-tested programs in which income limits are adjusted annually for inflation. The process proposed by the department is, in fact, significantly more responsive than similar processes in use by the Social Security Administration for social security and SSI or by the Food and Nutrition Service for food stamps.

Caseloads for workers in the department's health access eligibility unit exceed 1800 per person. Implementing this mass change uniformly by an automated process ensures fair and equitable application of income standards.

Comment: The department should discount COLA income until the FPL is updated, as in the Medicaid programs (QMB & SLMB) serving Medicare beneficiaries.

Response: The department is unable to identify any substantial group of health care assistance recipients whose coverage is jeopardized by the COLA.

At the beginning of each calendar year, the Social Security Administration applies a cost-of-living adjustment (COLA) to social security payments, based on inflation during the previous federal fiscal year (October through September). To reduce the incidence of elderly and disabled Vermonters losing Medicaid coverage because of this increase in income, PATH adjusts the income eligibility limits used for traditional Medicaid at the same time. These income eligibility limits are unrelated to the federal poverty levels (FPL).

At the same time, the Social Security Administration applies the COLA to supplemental security income (SSI) benefits. Since SSI recipients are automatically income-eligible for Medicaid, however, the COLA does not jeopardize their Medicaid eligibility.

Few elderly and disabled Vermonters receiving social security payments receive health care coverage under the Vermont Health Access Plan (VHAP), even those with income above the income eligibility limits for traditional Medicaid but under the VHAP limit of 150 percent of the FPL. This is because they are nearly all Medicare recipients, and Medicare recipients are not eligible for VHAP coverage. The social security COLA, therefore, has very little impact on VHAP recipients.

Finally, Vermonters receiving health care assistance under VHAP-Pharmacy, VScript, or the VHAP pharmacy discount program (VHAP-PDP) are covered through the end of June. Their coverage, therefore, is not jeopardized by the COLA.

A small number of new applicants for VHAP-Pharmacy, VScript, or VHAP-PDP receiving social security payments, those whose income is at or near income eligibility limits for those programs during the first three months of the year, have to wait until April 1 to be determined eligible for pharmacy benefits coverage.

Disregarding COLA increases until the FPL is updated, as the commenter suggests, introduces a significant complexity into the eligibility determination process for individuals receiving food stamps as well as health care assistance. Federal food stamp rules require the department to count COLA increases. Treating the income differently for health care assistance would require substantial manual processing and present significant risk of quality control errors in food stamps, for which the department would be subject to federal fiscal sanctions.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing regulation content.

Manual Maintenance

Remove

Insert

Medicaid Policy

TOC (M300-399) through
M300 P.6 (including PP&Ds)

TOC (M300-399) through
M303 (10 pages)

VScript Policy

3201.62 P. 4 (97-4F)
3201.62 P. 5 (99-4F)
Nothing

3201.62 P. 4 (01-07)
3201.62 P. 5 (01-07)
3201.64 (01-07F)

VHAP-Pharmacy Policy

3301.73 (96-4F)

3301.73 (01-07F)

VHAP-PDP Policy

3401.53 (00-23F)

3401.53 (01-07F)

VHAP Policy

4001.84 (98-23F)
4001.91 (00-14)

4001.84 (01-07F)
4001.91 (01-07)